

AMENDED IN SENATE JUNE 14, 1999

SENATE BILL

No. 1146

Introduced by Senator Burton
(Principal coauthor: Senator Polanco)
(Coauthor: Senator Karnette)
(Coauthors: Senators Escutia, Haynes, and Karnette)
(Coauthors: Assembly Members Baugh, Cardoza, and
Granlund)

February 26, 1999

An act to amend Section 43104 of, and to add Sections 39027.3 and 43105.5 to, the Health and Safety Code, ~~and to amend Section 27156 of the Vehicle Code, relating to air relating to air~~ pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Burton. Motor vehicles: pollution control devices.

(1) Existing law authorizes the State Air Resources Board to adopt and implement emission standards for new motor vehicles to control emissions from those vehicles.

~~This bill would require a motor vehicle manufacturer to provide, with respect to any motor vehicle and motor vehicle engine sold, specified information and tools to persons engaged in the business of service, repair, manufacture, or remanufacture of emissions-related motor vehicle parts, as defined. The bill would require the state board to assemble a panel of arbitrators to resolve individual disputes regarding the availability and cost of the information and tools.~~

This bill would require the state board, for all motor vehicles certified in accordance with specified test procedures, to adopt regulations that would require motor vehicle manufacturers to take specified actions to make available information relating to motor vehicle emissions monitoring and testing, and diagnostic systems, as prescribed. The bill would require that those regulations allow for the imposition of reasonable business conditions as a condition of disclosure requirements covering confidential, proprietary, or trade secret information.

The bill would require the executive officer of the state board, if he or she obtains credible evidence of a motor vehicle manufacturer's failure to comply with any of the requirements imposed by those regulations, to issue a notice of noncompliance to the manufacturer. The bill would permit the motor vehicle manufacturer to request a public hearing before the state board to contest the notice of noncompliance within a specified time period. The bill would authorize the state board, if the motor vehicle manufacturer fails to correct the violation within 30 days from the date of the public hearing, to impose a civil penalty on the manufacturer in the amount of \$25,000 per day per violation and, if the violation is not corrected within 90 days from the date of imposition of the penalty, to suspend certification of any motor vehicles or motor vehicle engines certified by the state board for that manufacturer.

~~The bill would provide that any information required to be provided by the bill that is confidential, proprietary, or trade secret information, shall be safeguarded, as specified, and would make it a crime to willfully obtain information in violation of this provision. By creating a new crime, the bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

~~(a) The growing practice of preventing qualified~~

(a) *There are over 26 million registered motor vehicles in California, and those vehicles are relied upon heavily by California residents to conduct their everyday activities.*

(b) *The use of those motor vehicles results in hundreds of tons of pollutants being emitted into California's air every day, significantly affecting air quality and public health and safety. To prevent unnecessary pollution, it is in the best interests of this state to ensure that the ability of California motorists to obtain service, repair, or replacement of faulty emissions-related components of their motor vehicles is not limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers.*

(c) *Recent emissions standards adopted and implemented by the State Air Resources Board for motor vehicles manufactured after 1993 have resulted in the development by vehicle manufacturers of "onboard diagnostic computers," that interface with the many component parts of a vehicle's emissions control system. Essential service, repair, and parts information and tools for interfacing with a vehicle's onboard diagnostic computer system are not readily available to independent automotive repair technicians and facilities. Accordingly, consumers are restricted to having the service and repair of faulty emissions-related components of a motor vehicle performed only by franchised dealerships, and consumers are also forced to purchase replacement parts manufactured solely by or on behalf of the vehicle manufacturer. This restriction of consumer choice and options is contrary to the history of automotive repair, which saw the advent of independent repair technicians and facilities and independent aftermarket parts manufacturers as healthy market competitors to vehicle manufacturers and their dealerships.*

1 (d) *The arbitrary withholding of essential service,*
2 *repair, and parts information and tools by vehicle*
3 *manufacturers from independent automotive repair*
4 *technicians and independent aftermarket parts*
5 *manufacturers may result in improper and needlessly*
6 *costly repairs that could also endanger the public and*
7 *result in anticompetitive effects harmful to the best*
8 *interests of the state.*

9 ~~automotive repair technicians and aftermarket parts~~
10 ~~manufacturers from repairing vehicles equipped with~~
11 ~~onboard diagnostic computers is contrary to the public~~
12 ~~interest.~~

13 ~~(b) This practice, if left unchecked, may adversely~~
14 ~~affect California's highly mobile economy that depends~~
15 ~~heavily on 26 million vehicles, the largest fleet of~~
16 ~~registered vehicles in the United States.~~

17 ~~(e) The withholding of service information by vehicle~~
18 ~~manufacturers from qualified automotive repair~~
19 ~~technicians may result in improper mechanical and~~
20 ~~electrical operation of these vehicles and can endanger~~
21 ~~the individual health, safety, and welfare of California's~~
22 ~~million residents.~~

23 ~~(d) The withholding of technologically advanced tool~~
24 ~~and part manufacturing information repair technicians~~
25 ~~could result in a drastic increase in the approximately~~
26 ~~thirteen billion dollars (\$13,000,000,000) currently spent~~
27 ~~on professional automotive repair services and the two~~
28 ~~billion six hundred million dollars (\$2,600,000,000)~~
29 ~~currently spent by Californians on parts and accessories~~
30 ~~each year to maintain their vehicles.~~

31 ~~(e) This increased cost to California consumers may be~~
32 ~~directed to businesses outside of the state or to California~~
33 ~~businesses whose parent company is located in another~~
34 ~~state or country. This would have an adverse effect on the~~
35 ~~automotive repair industry in California that employs~~
36 ~~approximately 300,000 workers.~~

37 ~~(f) In order to properly serve California's consumers,~~
38 ~~today's independent automotive technician must be able~~
39 ~~to work easily with all automotive computer systems,~~
40 ~~including, but not limited to, onboard diagnostic systems,~~

1 and be able to perform necessary diagnostics, repairs, and
2 reprogramming functions and provide competitively
3 priced replacement parts.

4 (g) An estimated 34,000 independent automotive
5 repair shops and 1,200 new car dealerships each year file
6 business applications and pay annual fees to the Bureau
7 of Automotive Repair for an automotive repair dealer
8 registration. Independent automotive repair small
9 businesses constitute the vast majority, approximately 97
10 percent, of the facilities that Californians have come to
11 rely on for service, while the new car dealerships
12 represent only a small minority, approximately 3 percent.

13 (h) Existing law authorizes the State Air Resources
14 Board to adopt and implement emission standards for
15 new motor vehicles to control mobile emissions. In the
16 past several years, the automobile manufacturers have
17 sought compliance with these standards in a manner that
18 favors the new car dealerships and inadvertently denies
19 independent automotive repair facilities access to
20 necessary repair information, tools, and competitively
21 priced replacement parts.

22 (i) The effectiveness of California's vehicle inspection
23 and maintenance program in reducing 112 tons of
24 harmful emissions per day from onroad vehicles relies
25 entirely upon the proper inspection, maintenance,
26 diagnosis, and repair of our state's 26 million vehicles by
27 independent automotive repair technicians.

28 (j) It is in the interest of the California consumer that
29 all members of the automotive repair industry have
30 necessary access to diagnostic and repair information,
31 tools, and replacement parts thereby enabling them to
32 provide competent and competitive service to the state's
33 26 million vehicles and their owners.

34 SEC. 2. Section 39027.3 is added to the Health and
35 Safety Code, to read:

36 39027.3. (a) "Covered person" means any person
37 engaged in the business of service or repair of motor
38 vehicles or the manufacture or remanufacture of
39 emissions-related motor vehicle parts for those motor
40 vehicles.

1 (b) “Emissions-related motor vehicle part” means any
2 automotive part that affects or that may affect emissions
3 from a motor vehicle, including replacement parts,
4 consolidated parts, rebuilt parts, remanufactured parts,
5 add-on parts, modified parts, and specialty parts.

6 (c) “Enhanced information” means information that
7 is specific for an original equipment manufacturer’s
8 brand of tools and equipment.

9 SEC. 3. Section 43104 of the Health and Safety Code
10 is amended to read:

11 43104. For the certification of new motor vehicles or
12 new motor vehicle engines, the state board shall adopt, by
13 regulation, test procedures and any other procedures
14 necessary to determine the following:

15 (a) Whether the vehicles or engines are in compliance
16 with the emission standards established pursuant to
17 Section 43101. The state board shall base its test
18 procedures on federal test procedures or on driving
19 patterns typical in the urban areas of California.

20 (b) Whether a manufacturer is in compliance with
21 Section 43105.5.

22 SEC. 4. Section 43105.5 is added to the Health and
23 Safety Code, to read:

24 ~~43105.5.—(a) For any motor vehicle or motor vehicle~~

25 43105.5. (a) *For all motor vehicles certified in*
26 *accordance with the test procedures adopted pursuant to*
27 *Section 43104, the state board, not later than January 1,*
28 *2001, shall adopt regulations that require a motor vehicle*
29 *manufacturer to do all of the following, to the extent not*
30 *limited or prohibited by federal law (the regulations*
31 *adopted by the state board pursuant to this provision may*
32 *include subject matter similar to the subject matter*
33 *included in regulations adopted by the United States*
34 *Environmental Protection Agency):*

35 (1) *Make available on the Internet, within a*
36 *reasonable period of time, the full contents of all manuals,*
37 *technical service bulletins, and training materials*
38 *regarding emissions-related motor vehicle parts.*

39 (2) *Make the diagnostic tools necessary to service and*
40 *repair any of the manufacturer’s emissions-related motor*

1 vehicle parts available for sale, within a reasonable period
2 of time, at a nondiscriminatory price to covered persons,
3 and make the enhanced information related to tools and
4 equipment available to equipment and tool companies in
5 an electronic format.

6 (3) If the motor vehicle manufacturer uses
7 reprogrammable computer chips in its motor vehicles,
8 provide equipment and tool companies with the
9 information that is provided by the manufacturer to its
10 dealerships to allow those companies to incorporate into
11 aftermarket tools the same reprogramming capability.

12 (4) Provide to covered persons, within a reasonable
13 period of time, a description of the operating parameters,
14 electronic interface specifications, and physical attributes
15 for all components monitored by the onboard diagnostic
16 system. That information shall include, but is not limited
17 to, all of the following for each monitoring system utilized
18 by a manufacturer that has the potential of setting a fault
19 code or illuminating the OBD II malfunction indicator
20 light (MIL):

21 (A) A description of the operation of the monitor,
22 including a description of the parameters that are being
23 monitored for each component being monitored, any
24 enabling conditions involved, and the details of any
25 rationality checks performed on the component and
26 criteria for setting a fault code or MIL.

27 (B) A listing of all OBD II Diagnostic Trouble Codes
28 associated with the monitor.

29 (C) A description of the typical entry conditions for
30 the monitor to execute during vehicle operation.

31 (D) A listing of monitor sequence, execution
32 frequency, and typical duration.

33 (E) A listing of typical malfunction thresholds for
34 monitors, including the units in which they are displayed
35 in Mode \$06 of the SAE J1979 Generic Scan Tool.

36 (F) For OBD II parameters for specific vehicles that
37 exceed the typical parameters required to be listed by
38 subparagraphs (A) to (E), inclusive, by more than 5
39 percent and are not otherwise available in Mode \$06 of
40 the SAE J1979 Generic Scan Tool, the OBD II description

1 shall indicate the deviation and provide a separate listing
2 of the typical values for those vehicles.

3 (G) The information required by this paragraph shall
4 not include algorithms, software codes, and specific
5 calibration data beyond that available on Mode \$06 of the
6 SAE J1979 Generic Scan Tool.

7 (H) Transfer functions for all OBD II monitored
8 sensors and actuators. For sensors those functions include
9 output voltage and amperage frequency or other signal
10 as a function of input conditions. For actuators those
11 functions include actuation and mechanical output as a
12 function of input voltage and amperage frequency or
13 other signal.

14 (5) Not utilize any access or recognition code or any
15 type of encryption that would prevent a vehicle owner
16 from using a motor vehicle part that has not been
17 manufactured by that manufacturer or any of its original
18 equipment suppliers.

19 (6) Provide information regarding initialization
20 procedures for dealing with immobilizer circuits or other
21 lock-out devices necessary for properly repairing,
22 rebuilding, installing, or otherwise reinitializing vehicle
23 onboard computers that employ integral vehicle security
24 systems.

25 (b) If the information required to be disclosed by a
26 motor vehicle manufacturer pursuant to subdivision (a)
27 is determined by the state board to be confidential,
28 proprietary, or a trade secret, the regulations adopted by
29 the state board shall allow for the imposition of reasonable
30 business conditions as a condition of disclosure, and may
31 include the imposition of punitive sanctions for the
32 improper release of information that has been
33 determined by the state board to be confidential,
34 proprietary, or a trade secret to competitors of the
35 manufacturer. The regulations adopted by the state
36 board shall, to the extent required by law, provide for the
37 payment of just compensation to the vehicle
38 manufacturer for the required disclosure of information
39 that has been determined by the state board to be a trade
40 secret. The regulations shall also provide for the



1 dissemination of trade secret information through
2 licensing agreements and the collection of fair and
3 reasonable licensing fees.

4 (c) If the executive officer of the state board obtains
5 credible evidence that a motor vehicle manufacturer has
6 failed to comply with any of the requirements of this
7 section or the regulations adopted by the state board, the
8 state board shall issue a notice to the manufacturer
9 warning of that noncompliance. The vehicle
10 manufacturer may request a public hearing before the
11 state board within 30 days from the date of the notice of
12 violation to contest that notice of violation. If, after the
13 hearing, the state board finds that the motor vehicle
14 manufacturer has failed to comply with any of the
15 requirements of this section or the regulations adopted by
16 the state board, and the manufacturer fails to correct the
17 violation within 30 days from the date of the hearing, the
18 state board shall impose a civil penalty on the
19 manufacturer in the amount of twenty-five thousand
20 dollars (\$25,000) per day per violation until the violation
21 is corrected. Each day a violation continues shall be
22 considered a separate violation. If the violation is not
23 corrected within 90 days from the date the penalty is
24 imposed, the state board shall suspend the certification of
25 all motor vehicles or motor vehicle engines certified by
26 the state board for that motor vehicle manufacturer.

27 ~~engine sold, the manufacturer shall provide to a person~~
28 ~~engaged in the business of service, repair, manufacture,~~
29 ~~or remanufacture of emissions-related motor vehicle~~
30 ~~parts, the information and tools necessary to service and~~
31 ~~repair the vehicle or engine, or to design, manufacture,~~
32 ~~remanufacture, test, and install an emissions-related~~
33 ~~motor vehicle part. The information shall include~~
34 ~~enhanced diagnostic information, reprogramming~~
35 ~~capability, and the operating parameters and~~
36 ~~specifications within which an emissions-related motor~~
37 ~~vehicle part must function so as not to activate any code~~
38 ~~or device designed to alert the vehicle owner or~~
39 ~~technician of a possible emissions problem.~~

1 ~~(b) The manufacturer may charge a fee, not to exceed~~
2 ~~its actual cost, to provide the information and tools~~
3 ~~specified in subdivision (a).~~

4 ~~(c) The motor vehicle manufacturer shall provide the~~
5 ~~information required by subdivision (a) in a readily~~
6 ~~accessible electronic format that is compatible with~~
7 ~~computer systems commonly used in the automotive~~
8 ~~aftermarket industry and that is accessible without the~~
9 ~~need of any decoding information or device.~~

10 ~~(d) Any person engaged in the business of service,~~
11 ~~repair, manufacture, or remanufacture of~~
12 ~~emissions-related motor vehicle parts is entitled to~~
13 ~~unrestricted access to, and use of, information in the~~
14 ~~onboard computer and the onboard diagnostic system for~~
15 ~~the purposes of servicing and repairing a vehicle, and~~
16 ~~designing, manufacturing, remanufacturing, testing, and~~
17 ~~installing an emissions-related motor vehicle part. No~~
18 ~~motor vehicle pollution control device shall be potted or~~
19 ~~soldered or in any manner designed to preclude the~~
20 ~~access or use mandated by this subdivision.~~

21 ~~(e) Any information required to be disclosed under~~
22 ~~this section that the motor vehicle manufacturer can~~
23 ~~demonstrate is confidential, proprietary, or trade secret~~
24 ~~information shall be safeguarded, in a manner specified~~
25 ~~by the state board, to prevent disclosure to any person~~
26 ~~other than a person described in subdivision (d) of~~
27 ~~Section 27156 of the Vehicle Code.~~

28 ~~(f) The state board shall assemble a panel of~~
29 ~~independent and impartial arbitrators to resolve~~
30 ~~individual disputes regarding the availability and cost of~~
31 ~~the information and tools required to be provided by a~~
32 ~~manufacturer pursuant to this section.~~

33 ~~SEC. 5. Section 27156 of the Vehicle Code is amended~~
34 ~~to read:~~

35 ~~27156. (a) No person shall operate or leave standing~~
36 ~~upon any highway any motor vehicle that is a gross~~
37 ~~polluter, as defined in Section 39032.5 of the Health and~~
38 ~~Safety Code.~~

39 ~~(b) No person shall operate or leave standing upon any~~
40 ~~highway any motor vehicle that is required to be~~

~~1 equipped with a motor vehicle pollution control device
2 under Part 5 (commencing with Section 43000) of
3 Division 26 of the Health and Safety Code or any other
4 certified motor vehicle pollution control device required
5 by any other state law or any rule or regulation adopted
6 pursuant to that law, or required to be equipped with a
7 motor vehicle pollution control device pursuant to the
8 National Emission Standards Act (42 U.S.C. Secs. 1857f-1
9 to 1857f-7, inclusive) and the standards and regulations
10 adopted pursuant to that federal act, unless the motor
11 vehicle is equipped with the required motor vehicle
12 pollution control device that is correctly installed and in
13 operating condition. No person shall disconnect, modify,
14 or alter any required motor vehicle pollution control
15 device.~~

~~16 (e) No person shall install, sell, offer for sale, or
17 advertise any device, apparatus, or mechanism intended
18 for use with, or as a part of, any required motor vehicle
19 pollution control device or system that alters or modifies
20 the original design or performance of any motor vehicle
21 pollution control device or system.~~

~~22 (d) No person shall obtain information deemed to be
23 confidential, proprietary, or trade secret information as
24 provided in subdivision (e) of Section 43105.5 of the
25 Health and Safety Code unless the person is engaged in
26 the business of service, repair, manufacture, or
27 remanufacture of emissions-related motor vehicle parts
28 or is in the business of providing information or service to
29 a business that conducts the service, repair, manufacture,
30 or remanufacture, and has obtained any applicable state
31 license necessary to lawfully conduct that business.~~

~~32 (e) If the court finds that a person has willfully violated
33 this section, the court shall impose the maximum fine that
34 may be imposed in the case, and no part of the fine may
35 be suspended.~~

~~36 (f) "Willfully," as used in this section, has the same
37 meaning as the meaning of that word prescribed in
38 Section 7 of the Penal Code.~~

~~39 (g) No person shall operate a vehicle after notice by a
40 traffic officer that the vehicle is not equipped with the~~

1 required certified motor vehicle pollution control device
2 correctly installed in operating condition, except as may
3 be necessary to return the vehicle to the residence or
4 place of business of the owner or driver or to a garage,
5 until the vehicle has been properly equipped with the
6 device.

7 (h) The notice to appear issued or complaint filed for
8 a violation of this section shall require that the person to
9 whom the notice to appear is issued or against whom the
10 complaint is filed produce proof of correction pursuant to
11 Section 40150 or proof of exemption pursuant to Section
12 4000.1 or 4000.2.

13 (i) This section does not apply to an alteration,
14 modification, or modifying device, apparatus, or
15 mechanism found by resolution of the State Air Resources
16 Board to do either of the following:

17 (1) Not to reduce the effectiveness of any required
18 motor vehicle pollution control device.

19 (2) To result in emissions from any such modified or
20 altered vehicle which are at levels which comply with
21 existing state or federal standards for that model year of
22 the vehicle being modified or converted.

23 (j) This section applies to motor vehicles of the United
24 States or its agencies, to the extent authorized by federal
25 law.

26 SEC. 6. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.